

Family Support in the Army

Support of Army Family Members
Including the Defense Language Institute Self Help Checklist

Each military service has a slightly different program to deal with support of family members.

The Army's program is detailed in Army Regulation 608-99, Family Support, Child Custody, and Paternity, (1 November 1994). The regulation requires a soldier to comply with any existing court order. In the absence of a court order, the regulation requires a soldier to comply with a written financial support agreement. In the absence of a court order or a support agreement, the regulation requires a soldier to comply with the financial support requirements detailed in the regulation. The latter usually means that a soldier must pay his or her family members an amount equal to the soldier's basic allowance for quarters at the with dependents rate (BAQ-WITH). As of January 1998, this amount ranges from \$371.70 a month for a private E-1 to \$1043.70 for any general. Even though the Defense Department merged BAQ and VHA (variable housing allowance) into BAH (basic allowance for housing), the appropriate support amount under the AR 608-99's BAQ standard can still be determined from DFAS. It's Web Page with the BAQ breakdown is at www.dtic.mil/perdiem/1998bah2.html. The regulatory requirement for support equal to BAQ-WITH prompts most of the questions on the program and is the focus of this article.

The Army's regulation on family support is not a substitute for court action. It is not an entitlement program. It is an interim measure only and it is based on the public policy interest in government employees supporting their families. If ABC Corporation received a letter about one of its employees not supporting his family, the response would probably be limited to sympathy in most cases. Soldiers, however, are public servants who move often and frequently to foreign countries.

The amount of required support is limited. The Army focuses on the BAQ portion of the allowance it pays the soldier for housing, specifically the extra allowance it pays soldiers with family members. Single soldiers are provided government quarters or a basic allowance for housing (BAH) off post. Married soldiers are provided larger government quarters or more money (BAH-WITH) specifically because of the presence of spouse and/or children. If the Army is paying more for family members it expects a soldier to spend that amount, at a minimum, on family members. If the soldier is not supporting the family the Army could and in some cases does stop paying the extra amount, but that does not help the family. That is why the rule is worded "support equal to" BAQ-WITH. The fact that the soldier does not receive BAH-WITH (thus no BAQ-WITH) does not relieve the soldier of the support responsibility except under certain equitable considerations such as the family members live in government supplied quarters.

The 1987 version of the regulation allowed commanders to order soldiers to provide support in excess of the BAQ-WITH, but that authority was eliminated in the 1994 regulation. The current regulation does not authorize collection of arrearages of the regulatory BAQ-WITH support amount. The regulation requires the soldier to pay the required amount to the supported family member on the first day of the month following the month to which the support payment pertains, but the Army will not referee arguments over who was responsible for making the car payments during the six months before the matter was brought to the attention of the commander. So-called support in kind such as payment of household expenses to a third party is limited to rent or mortgage payments (including principal, interest, tax, and insurance) unless the supported family member agrees to credit other payments to third parties toward satisfaction of the regulation-required support amount. The regulation directs commanders to encourage, but not order, soldiers to pay arrearages. It allows commanders to discipline soldiers for not paying arrearages, but collection of arrearages is a matter for state courts. Again, the regulation is an

interim measure only. It is not intended to make either side entirely comfortable avoiding final resolution in court.

If a soldier is not supporting his or her family members according to the regulation, the soldier's immediate commander is charged with enforcing the regulation. The commander will counsel the soldier on his or her responsibilities and can take a variety of administrative or disciplinary actions to enforce the regulation. That's right; the support provisions of the regulation are punitive! No, we do not prosecute many non-support cases. Usually the possibility of criminal prosecution prompts support. The regulation contains other less dramatic, but effective tools as well. It provides legal authority for commanders to terminate a soldier's assignment outside the United States, consistent with other military requirements, when it adversely affects the legal rights of others seeking financial support. As a practical matter, this places the soldier back where state court process is more easily obtained.

Sometimes unit commanders are confused by or are reluctant to enforce the regulatory support requirements. In those limited instances you can obtain the fastest results by going to the Staff Judge Advocate or the Inspector General office servicing the soldier's command. Neither office is intended to replace the unit commander, but both are mentioned in the regulation as a secondary enforcement tool and can be quite effective. If all the above fails write to: Legal Assistance Policy Division / 2200 Army Pentagon / Washington, D.C. 20310-2200. You can always write your congressman, but the ultimate resolution will involve one or more of the above officers. Understanding the regulation means money to your non-support client while the divorce action works through the court system.

Updated and edited from an article by COL Demmon F. Canner

Inspector General DLIFLC Family Support Payment Self Help Checklist

These are the steps you must take to get family support payments started. We are providing this checklist to remind you of each step. As the third step, you will contact your spouse's commander. If you can not resolve the problems after following this checklist, please contact us.

>>>>>>we are ready to assist you!<<<<<<<

Step 1: Are you eligible?

- * 1. Your spouse must be a full-time employee in the U.S. Army.
 - a. Other Services: Each service has different requirements (We can help direct you to the proper assistance agency)
 - b. Army Reserve/National Guard: Generally, we do not have authority over this pay unless the spouse is on full-time active duty for over 180 days.
 - c. Retired Army: Only if the court order includes a specific "garnishment order"

Step 2: Get your important related records.

- * 1. Certified copy or the original marriage certificate and verification you are still married
- * 2. Your military ID card

* 3. A court order, if it exists. With one, you may get an involuntary allotment if your spouse does not cooperate. Without a court order, you can not get an involuntary allotment. A certified copy of the court order for support will make the process much more direct. If you can not afford an attorney, the local State District Attorney Office, Family Support Division can help. In this area, that phone number is: (408) 755-3200. When the voice mail starts, immediately press "0" and ask for help.

* 4. Certified copy of any written support agreement that is not a court order you have made with your spouse

* 5. Bank routing ID number and account number of where you want the money deposited (ask the bank)

* 6. Any letters, email or other relevant communications you have had with the command or your spouse related to support payments.

* 7. Your spouse's full name, rank and social security number. If you know where he or she is assigned, provide any information about the the unit.

* 8. Provide the name(s) of the children (and spouse if you are not the spouse and are seeking help in someone else's behalf) For example, an authorized third party is a former spouse with children remarried to another service member.

It will speed the response if you enclose a copy of all of the items listed above when you write the commander. You will need to have all of these items with you on the second visit to the IG office.

Step 3: Let the Commander know there is a problem.

We do not recommend phone calls to commanders as a first contact! They are not as reliable as a letter, and commanders are often difficult to reach by phone..

* 1. If you do not have a mailing address for your spouse's unit, use the mailing address and phone number for the commander provided by the IG or SJA. No matter who communicates with you, route ALL answers or any additional communications through the commander. It is your only way to be certain he or she knows what is being done.

Your spouse's commander may be reached at:

Rank & Name: _____

Military Unit: _____

Mail address #1: _____

Mail address #2: _____

Commercial phone: _____

Fax (if available): _____

* 2. Write a letter to the commander that you are not receiving correct support. Be as detailed as possible. Include at least the following:

- a. Your spouse's full name and social security number
- b. Your name and social security number
- c. State clearly what you are seeking: current child support, past child support, spousal support, an ID card or whatever combination you require.
- d. Amount of payment you should be getting (if you know)
- e. Amount you are getting, when last payment was and how payment was received (mail, money order, direct deposit, etc.)
- f. Identify bank account that should be getting the payment, along with it's bank routing ID, mailing address, and your account number. We recommend payments be mailed or transferred to a bank, not your home. This makes it easier to determine if or when a payment arrives.
- g. You should request that you be notified by phone (or email or fax) when the commander receives your letter. This will help you verify who to call for follow-up.
- h. Any other information you think is important

* 3. Address the letter to "Captain Jones, Commander" instead of "Commander", and mark the envelope with the words "OFFICIAL MAIL". This will help insure the commander personally gets your mail.

* 4. Make a personal copy of everything before you send it!

* 5. Mail the letter by return receipt or registered mail and make sure you get the proof.

* 6. Wait three weeks for a reply. A commander has 14 days from the day he or she receives an inquiry to provide a response.

Step 4: Follow-up!

* 1. If you have not heard any response after three weeks, call the commander and ask the status. If you are not allowed to speak to the commander, or if the personnel you talk to are unhelpful, contact the IG. Set up an appointment and bring in your records.

* 2. **ONLY IF YOU HAVE A COURT ORDER FOR SUPPORT:** You may be able to initiate an involuntary (non-cancelable) allotment if your spouse has been late with a payment for two or more months. Any court or child support enforcement agent (the district attorney in Monterey County) must send the notice and documentation to the Defense Finance and Accounting Service Center. After verification, the finance center begins an involuntary allotment to your bank or Credit Union for the amount in the court order so long as your spouse is on active duty.

You were helped by _____
of the Presidio of Monterey IG office.
ph (408)-242-5205 fax: (408)-242-5372

For military legal assistance call
POM SJA Legal Assistance
ph (408)-242-5083 fax: (408)-242-5085